

Division 3. Air Resources Board

Chapter 9. Off-Road Vehicles and Engines Pollution Control Devices

Article 5. Portable Engine and Equipment Registration

§ 2464. Appeals.

(a) Hearing Procedures

(1) Any applicant for, or a holder of, registration whose application or registration has been denied, suspended, or revoked may request a hearing to review the action taken by sending a request in writing to the Executive Officer. A request for hearing shall include, at a minimum, the following:

(A) name of applicant or registration holder;

(B) registration number;

(C) copy of the Executive Order revoking or suspending registration or the written notification of denial;

(D) a concise statement of the issues to be raised, with supporting facts, setting forth the basis for challenging the denial, suspension, or revocation (mere conclusory allegations will not suffice);

(E) a brief summary of evidence in support of the statement of facts required in (D) above; and

(F) the signature of an authorized person requesting the hearing.

(2) A request for a hearing shall be filed within 20 days from the date of issuance of the notice of the denial, suspension, or revocation.

(3) A hearing requested pursuant to this section shall be heard by a qualified and impartial hearing officer appointed by the Executive Officer. The hearing officer may be an employee of the ARB, but may not be any employee who was involved with the registration at issue. In a request for hearing of a denial of registration, after reviewing the request for hearing and supporting documentation provided under subsection (1) above, the hearing officer shall grant the request for a hearing if he or she finds that the request raises a genuine and substantial question of law or fact.

(4) Except as provided in (3) above, the hearing officer shall schedule and hold, as soon as practicable, a hearing at a time and place determined by the hearing officer.

(5) Upon appointment, the hearing officer shall establish a hearing file. The file shall consist of the following:

(A) the determination issued by the Executive Officer which is the subject of the request for hearing;

(B) the request for hearing and the supporting documents that are submitted with it;

(C) all documents relating to and relied upon in making the determination to deny registration or to suspend or revoke registration; and

(D) correspondence and other documents material to the hearing.

(6) The hearing file shall be available for inspection by the applicant at the office of the hearing officer.

(7) An applicant may appear in person or may be represented by counsel or by any other duly-authorized representative.

(8) The ARB may be represented by staff or counsel familiar with the registration program and may present rebuttal evidence.

(9) Technical rules of evidence shall not apply to the hearing, except that relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to relying in the conduct of serious affairs. No action shall be overturned based solely on hearsay evidence, unless the hearsay evidence would be admissible in a court of law under a legally recognized exception to the hearsay rule.

(10) The hearing shall be recorded either electronically or by certified shorthand reporter.

(11) If a hearing is held, the hearing officer shall render a written decision within 30 working days from the last day of hearing. The hearing officer may do any of the following:

(A) uphold the denial, suspension, or revocation action as issued;

(B) reduce a revocation to a suspension;

(C) increase a suspension to a revocation if the registration holder's conduct so warrants; and

(D) overturn a denial, suspension, or revocation in its entirety.

(12) The hearing officer shall consider the totality of the circumstances of the denial, suspension, or revocation, including but not limited to credibility of witnesses, authenticity and reliability of documents, and qualifications of experts. The hearing officer may also consider relevant past conduct of the applicant including any prior incidents involving other ARB programs.

(13) The hearing officer's written decision shall set forth findings of fact and conclusions of law as necessary.

(b) Hearing conducted by written submission.

Board Administration and Regulatory Coordination Unit

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(1) In lieu of the hearing procedure set forth in (a) above, an applicant may request that the hearing be conducted solely by written submission.

(2) In such case the requestor must submit a written explanation of the basis for the appeal and provide supporting documents within 20 days of making the request. Subsequent to such a submission the following shall transpire:

(A) ARB staff shall submit a written response to the requestors submission and documents in support of the Executive Officer's action no later than 10 days after receipt of requestor's submission;

(B) The registration holder may submit one rebuttal statement which may include supporting information, as attachment(s), but limited to the issues previously raised;

(C) If the registration holder submits a rebuttal, ARB staff may submit one rebuttal statement which may include supporting information, as attachment(s), but limited to the issues previously raised; and

(D) the hearing officer shall be designated in the same manner as set forth in (a)(3) above. The hearing officer shall receive all statements and documents and render a written decision. The hearing officer's decision shall be mailed to the requestor no later than 30 working days after the final deadline for submission of papers.

NOTE: Authority cited: Sections 39600-39601, 41752-41755, 43013(b) and 43018, Health and Safety Code. Reference: Sections 41750-41755, Health and Safety Code.

REFERENCE